

# STATE OF COLORADO

## Colorado General Assembly

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## MEMORANDUM

**TO:** Martha Olson and Donald Anderson

**FROM:** Legislative Council Staff and Office of Legislative Legal Services

**DATE:** November 17, 2017

**SUBJECT:** Proposed initiative measure 2017-2018 #73, concerning funding for public schools

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado Constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Colorado Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2017-2018 #72 to #79. This initiative is substantially similar to 2017-2018 #72, and therefore the comments and questions raised in this memorandum will not include comments and questions that were addressed in the memorandum for proposed initiative #72, except as necessary to fully understand the issues raised by the proposed initiative. Comments and questions addressed in the memorandum for proposed initiative #72 are also relevant and those comments, and questions are hereby

incorporated by reference in this memorandum. Only new comments and questions are included in this memorandum.

## **Purposes**

The major purposes of the proposed amendments to the Colorado constitution appear to be:

1. To declare that every person residing in the state through age 21 should receive an early-childhood, primary, and secondary education in the public schools that will enable every person to have the knowledge and learning essential to develop to his or her full potential and participate meaningfully in the civic and economic life of the community.
2. To permit state residents up to 21 years of age to receive a free early-childhood, primary, and secondary education designed to permit every student to receive equal educational opportunity.
3. To ensure that adequate state and local resources and public funding are available statewide and within each school district.
4. To remove from the general assembly any limitation, requirement, procedure, or restriction of section 3 (1)(b) of article X of the Colorado constitution and section 20 of article X of the Colorado constitution to ensuring that adequate state and local resource and public funding is available for public schools.
5. To require the general assembly to maintain statewide funding for education purposes specified in the proposed initiative as a percent of the total personal income of the residents of the state at least equivalent to the national average of percentages of statewide personal income dedicated to public education funding, and to achieve this level of funding by fiscal year 2023. To allow the people by initiative to increase the funding requirement in subsection (3) of article IX, section 2 of the Colorado constitution by a majority vote of the people.
6. To give local school districts authority to implement the general assembly's directives pursuant section 2 of article IX the Colorado constitution notwithstanding and overriding any limitation, requirement, procedure, or restriction of section 3 (1)(b) of article X of the Colorado constitution and section 20 of article X of the Colorado constitution.

7. To clarify that the proposed amendments to section 2 of article IX of the Colorado constitution do not reduce or otherwise affect the mandates and requirements of section 17 of article IX of the Colorado constitution, commonly known as "Amendment 23".
8. To require the general assembly to prepare a public report every five years concerning its progress in achieving the goals and purposes of section 2 of article IX, of the Colorado constitution.

## **Substantive Comments and Questions**

In addition to the substantive comments and questions raised in the memorandum for proposed initiative #72, which are incorporated by reference in this memorandum, the substance of the proposed initiative raises the following additional comments and questions:

1. With respect to the last sentence in subsection (3) of the proposed initiative:
  - a. Does the phrase "overriding anything to the contrary" mean something different than "notwithstanding"? If not, why have both phrases?
  - b. Is your intent to create an exception to the requirement that at least 55% of voters approve an amendment to the constitution that is limited to increasing the mandated statewide funding set forth in subsection (3) of the proposed initiative?
  - c. The exception references the people's power to approve a referred measure, but the notwithstanding clause only references section 1 of article V of the Colorado constitution. The 55%-vote requirement for the amendments to the constitution referred by the general assembly is included in the section 2 of article XIX of the Colorado constitution. Therefore, it unclear how this provision should be interpreted. What is your intention?
  - d. Does the exception have any effect on the geographic signature requirements set forth in section 1 (3.5) of article 5 of the Colorado constitution, which were also included in Amendment 71?
  - e. It seems like it will be difficult to know or estimate the mandated level of statewide funding for future years. If a different formula for funding is required, how will it be known whether the new formula is an increase and who will decide whether only a majority of votes are need to pass the amendment? What happens if it turns out that the new formula is not an increase?

- f. Given the issues in the prior question, is it your intention that only amendments that incontrovertibly are an increase can be passed by a majority of votes? (For example, the state's share must be at least equivalent to one percent higher than the national average of percentages of statewide personal income dedicated to public education.)
- g. To meet the requirements for the exception, must the actual language of subsection (3) be amended or could it be amended by a new section that supersedes it? For example, subsection (3) arguably creates an amendment to Amendment 71 by creating an exception to it without actually amending the language of that amendment.
- h. If a future initiative increases the mandated level of state funding and makes any other change to the constitution, then how many votes would be required for it to pass?

## **Technical Comments**

The technical comments raised in the memorandum for proposed initiative #72 are incorporated by reference in this memorandum. There are no additional technical comments raised by the proposed initiative.